

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
MODESTO DIVISION

In re ) Case No. 07-90770-E-7  
)  
BELLA VISTA BY PARAMONT, LLC, )  
)  
Debtor(s). )  
)  
\_\_\_\_\_)  
)  
GARY FARRAR, Chapter 7 ) Adv. Pro. No. 08-9107  
Trustee, )  
)  
Plaintiff(s), )  
)  
v. )  
)  
WARDA & YONANO, a Limited )  
Liability Partnership, )  
J.C. WILLIAMS COMPANY, a )  
California Corporation, JCW- )  
CYPRESS HOME GROUP, a )  
California Limited )  
Partnership, and JOHN C. )  
WILLIAMS, )  
)  
Defendant(s). )  
\_\_\_\_\_)

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
COSTS BILL AND INTEREST

Prevailing Plaintiff seeks to recover interest at the rate of four percent (4%), compounded, on the \$100,000.00 judgment amount for a preference. Plaintiff asserts that interest may be recovered from one of several alternative dates,

November 29, 2006, the date that the Defendant received the

1 \$100,000.00 payment which was determined to be a preference.

2 December 21, 2006, the date that Defendant deposited the  
3 \$100,000.00 payment which was determined to be a preference into  
4 Defendant's bank account.

5 December 9, 2008, the date the adversary proceeding to recover  
6 the preference was filed.

7 As stated by Plaintiff, awards of pre-judgment interest are  
8 governed by considerations of fairness and are awarded when it is  
9 necessary to make the wronged party whole. United States v.  
10 California State Bd. Of Equalization, 650 F. Ed 1127 (9th Cir.  
11 1981), aff'd, 456 U.S. 901 (1982). In federal question cases,  
12 absent of an applicable statute the awarding of prejudgment  
13 interest is left to the discretion of the court. City of Milwaukee  
14 v. Cement Div. Nat'l Gypsum Co., 515 US 189 (1995).

15 In this case, the court rejects the Plaintiff's contention  
16 that prejudgment interest is computed from the date the payment was  
17 received by Warda & Yonano ("Defendant"). The fact that the Debtor  
18 chose to pay the Defendant was not alleged to be improper under  
19 either federal or state law. The Trustee's action asserted that it  
20 should be set aside as preference, payment within one year to an  
21 insider, or as a fraudulent conveyance to the extent paid for  
22 services rendered to related entities.

23 The Defendant opposed the complaint, alleging among its  
24 defenses that it was not an insider such that the extended one-year  
25 statute of limitations should apply for payments it received for  
26 obligations owed by the Debtor. Because the action was filed  
27 within the one-year statute of limitations for fraudulent  
28 conveyances under 11 U.S.C. §549, the issue of whether Defendant

1 was an insider is not relevant. Under the fraudulent conveyance  
2 theory, Plaintiff sought recovery based on the Debtor having paid  
3 money to the Defendant in excess of any obligation owed by the  
4 Debtor to Plaintiff, irrespective of how Defendant applied the  
5 money to accounts of others.

6 Plaintiff did not provide the court with a breakdown of what  
7 had been paid to Defendant based upon a pre-existing obligation of  
8 the Debtor (the preference claim) and that which was in excess of  
9 the obligation owed by the Debtor (the fraudulent conveyance  
10 claim). The policy underlying awarding prejudgment interest was  
11 stated in United States ex rel. Bernard v. Casino Magic Corp., 384  
12 F.3d 510, 516 (8th Cir. 2004), to be,

13 The purpose of awarding prejudgment interest is to  
14 compensate the prevailing party for its true money  
15 damages, to encourage settlements, and to deter parties  
16 from benefitting from unfairly delaying litigation. Val-U  
17 Constr. Co. v. Rosebud Sioux Tribe, 146 F.3d 573, 582  
18 (8th Cir. 1998). To that end, generally prejudgment  
19 interest should be awarded, absent exceptional  
20 circumstances. See, Turn Key Gaming, Inc. v. Oglala Sioux  
21 Tribe, 313 F.3d 1087, 1093 (8th Cir. 2002). Often cited  
22 examples of such circumstances include the claimant's bad  
23 faith, the claimant's assertion of frivolous claims, and  
24 the claimant's repeated delay tactics. See e.g. City of  
25 Milwaukee v. Cement Div., Nat 'l Gypsum Co., 515 U.S.  
26 189, 196, 132 L. Ed. 2d 148, 115 S. Ct. 2091 (1995);  
27 Stroh Container Co. v. Delphi Indus., Inc., 783 F.2d 743,  
28 752 (8th Cir. 1986).

22 In the present case, there existed the factual issue of  
23 whether the Defendant was an insider for at least some portion of  
24 the amount at issue. Plaintiff did not identify for the court what  
25 portion related to this defense and what portion related to the  
26 fraudulent conveyance, for which such defense was irrelevant. From  
27 the presentation at trial, it does not appear that either party  
28 engaged in conduct to unfairly delay the trial, or conversely, to

1 clearly identify the specific amounts at issue for the two claims  
2 (preference and fraudulent conveyance).

3 While the Plaintiff could argue that at least from the date of  
4 the suit Defendant elected to defend the action rather than  
5 capitulate, and thereby had the use of Plaintiff's money, it is not  
6 clear that the Plaintiff clearly laid out the Defendant's liability  
7 sufficient to warrant the award of interest in this case. The  
8 application for prejudgment interest is denied.

9 Local Rule 292, Eastern District Court Local Rules,  
10 incorporated in the Local Bankruptcy Rules of Eastern District  
11 Bankruptcy Court, requires that a costs bill be filed within  
12 14 days of entry of the judgment. The cost bill shall itemize the  
13 costs and shall be supported by a memorandum of costs and affidavit  
14 of counsel. Cost bill forms are available from the clerk of the  
15 court and the court website.

16 No opposition to the Bill of Costs was filed by the Defendant.  
17 The court allows the following costs:

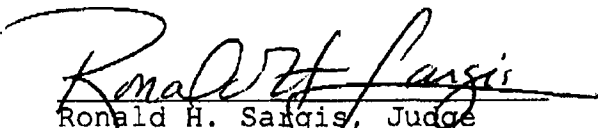
18	Filing Fee	\$150.00	
19	Photocopies	\$216.70	(2,167 copies at \$.10 costs)
20	Witness Fees	\$112.25	
21	Docket Fees	<u>\$ 20.00</u>	
22		\$498.95	

23 The court allows the photocopies at a cost of \$0.10 per page.  
24 Plaintiff showed no basis for a charge of \$0.25 per page for the  
25 copies. Recovery of costs is for the actual cost expended and not  
26 to generate a profit. \$0.10 per page is consistent with the costs  
27 of commercial copies obtainable at an attorney's office or copies  
28 made at a business providing copier machines for use by the public.

1 The clerk shall issue a costs bill taxing costs in the amount  
2 of \$498.95, which may be enforced as part of the judgment in this

3 Dated: August 17, 2010

By the Court

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6 Ronald H. Sargis, Judge  
7 United States Bankruptcy Court  
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This document does not constitute a certificate of service. The parties listed below will be served a separate copy of the attached document(s).

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